

37 Am. Jur. 2d Fraud and Deceit § 34

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Fraud and Deceit

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II. Elements and Requisites

B. Particular Elements or Considerations

2. Relationship of Parties

§ 34. Generally; confidential or fiduciary relationship; fiduciary duty

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Fraud](#)  1 to 7, 26

Although no privity of contract is required between a defrauded person and the defendant in order to maintain an action for fraud and deceit,¹ there can be no fraud in law or in fact without a breach of some legal or equitable duty.² Indeed, the presence of a legal duty is an essential element of a claim for constructive fraud.³ Although the duty not to make misrepresentations does not depend on the existence of a fiduciary relationship,⁴ nevertheless, fraud is often presumed or inferred where a confidential or fiduciary relationship exists between the parties to a transaction or contract.⁵

Constructive fraud often exists where the parties to a transaction have a special confidential or fiduciary relation which affords the power and means to one to take undue advantage of, or exercise undue influence over, the other.⁶ In fact, a fiduciary or other special relationship must exist in order to support a constructive fraud action.⁷ Moreover, where actual fraud has not been shown, a defendant may still be guilty of constructive fraud in situations where a special confidential relationship between the parties created a fiduciary duty in the defendant to act with the plaintiff's interests in mind.⁸

The creation of a fiduciary duty does not depend upon the existence of an agreement or contract between the parties but results from the relationship between the fiduciary and the beneficiary.⁹ Generally, whether a fiduciary duty exists, and the extent of that duty, depends upon the facts and circumstances of the case and the relationship of the parties;¹⁰ as a basic proposition, for a fiduciary duty to exist, there must be a fiduciary relationship between the parties.¹¹

Observation:

A fiduciary duty will not be lightly created, as it imposes extraordinary duties and requires the fiduciary to put the interests of the beneficiary ahead of its own if the need arises.¹² Before a person can be charged with a fiduciary obligation, he or she must either knowingly undertake to act on behalf and for the benefit of another or must enter into a relationship which imposes that undertaking as a matter of law.¹³ Also, in order to give full force to contracts, a court does not impose an informal fiduciary duty

lightly.¹⁴

A fiduciary duty is one in which there has been a special confidence reposed in one who in equity and good conscience is bound to act in good faith and with due regard to the interests of the one reposing confidence, and it extends to any possible case in which a fiduciary relationship exists in fact, and in which there is confidence reposed on one side, and resulting domination and influence on the other.¹⁵ A fiduciary is generally defined as a person who is required to act for the benefit of another person on all matters within the scope of their relationship; one who owes to another the duties of good faith, trust, confidence, and candor.¹⁶ A fiduciary is a person who is required to act for the benefit of another person on all matters within the scope of their relationship;¹⁷ one who owes to another the duties of good faith, trust, confidence, and candor or one who must exercise a high standard of care in managing another's money or property.¹⁸

CUMULATIVE SUPPLEMENT

Cases:

Allegations of buyer of rare watch, that corporate seller and its president represented themselves to buyer as watch dealers with significant rare watch expertise, were insufficient allegations of a fiduciary relationship under Arizona law, as would be required to state a claim for breach of fiduciary duty, relating to delivery of watch that did not have its original dial. [Cavan v. Maron](#), 182 F. Supp. 3d 954 (D. Ariz. 2016).

For purposes of a breach of fiduciary duty claim, a fiduciary relationship exists under New York law when one is under a duty to act for or to give advice for the benefit of another upon matters within the scope of the relation. [Schwartzco Enterprises LLC v. TMH Management, LLC](#), 60 F. Supp. 3d 331 (E.D. N.Y. 2014).

Under New York law, the elements of a breach of fiduciary duty are: (1) the existence of a fiduciary duty; (2) a knowing breach of that duty; and (3) damages resulting therefrom. [Ray Legal Consulting Group v. DiJoseph](#), 37 F. Supp. 3d 704 (S.D. N.Y. 2014).

Allegations in Chapter 7 debtor's complaint did not plead any facts supporting existence of fiduciary relationship between herself and deed of trust creditor, and did not state plausible claim, under California law, for constructive fraud in connection with deed of trust foreclosure sale. [In re Greenstein](#), 576 B.R. 139 (Bankr. C.D. Cal. 2017).

A breach of fiduciary duty is not required to establish constructive fraud. [Doe v. Boy Scouts of America](#), 356 P.3d 1049 (Idaho 2015).

To succeed on a claim for breach of fiduciary duty, a party must show: (1) the existence of a duty arising from a fiduciary relationship; (2) a failure to observe the duty; and (3) an injury resulting proximately therefrom. [D & H Autobath v. PJCS Properties I, Inc.](#), 2012-Ohio-5845, 983 N.E.2d 891 (Ohio Ct. App. 12th Dist. Fayette County 2012).

[END OF SUPPLEMENT]

Footnotes

¹ § 295.

Northwest Realty Co. v. Colling, 82 S.D. 421, 147 N.W.2d 675 (1966).

H-D Irrigating, Inc. v. Kimble Properties, Inc., 2000 MT 212, 301 Mont. 34, 8 P.3d 95 (2000).

Fry v. UAL Corp., 84 F.3d 936 (7th Cir. 1996).

§ 462.

§ 9.

Assilzadeh v. California Federal Bank, 82 Cal. App. 4th 399, 98 Cal. Rptr. 2d 176 (2d Dist. 2000); Cash in a Flash, Inc. v. McCullough, 853 N.E.2d 533 (Ind. Ct. App. 2006); Refreshment Management Services, Corp. v. Complete Office Supply Warehouse Corp., 89 A.D.3d 913, 933 N.Y.S.2d 312 (2d Dep't 2011); Eastover Ridge, L.L.C. v. Metric Constructors, Inc., 139 N.C. App. 360, 533 S.E.2d 827 (2000).

As to constructive and actual fraud, generally, see §§ 8, 9.

Garrison v. CC Builders, Inc., 2008 WY 34, 179 P.3d 867 (Wyo. 2008).

Benfeld v. Fleming Properties, LLC, 89 A.D.3d 654, 932 N.Y.S.2d 140 (2d Dep't 2011).

Terrebonne Concrete, LLC v. CEC Enterprises, LLC, 76 So. 3d 502 (La. Ct. App. 1st Cir. 2011), writ denied, 75 So. 3d 464 (La. 2011).

Omega Center for Pain Management, L.L.C. v. Omega Institute of Health, Inc., 975 So. 2d 48 (La. Ct. App. 5th Cir. 2007).

In re Jackson Nat. Life Ins. Co. Premium Litigation, 193 F.R.D. 505 (W.D. Mich. 2000) (applying Texas law).

City of Hope Nat. Medical Center v. Genentech, Inc., 43 Cal. 4th 375, 75 Cal. Rptr. 3d 333, 181 P.3d 142 (2008).

Areda v. S-W Transp., Inc., 365 S.W.3d 838 (Tex. App. Dallas 2012).

Ehrenhaus v. Baker, 717 S.E.2d 9 (N.C. Ct. App. 2011).

U.S. v. Milovanovic, 678 F.3d 713 (9th Cir. 2012), as amended, (May 22, 2012).

Federal Ins. Co. v. International Business Machines Corp., 18 N.Y.3d 642, 942 N.Y.S.2d 432, 965 N.E.2d 934 (2012); Dykstra v. Page Holding Co., 2009 SD 38, 766 N.W.2d 491 (S.D. 2009).

Federal Ins. Co. v. International Business Machines Corp., 18 N.Y.3d 642, 942 N.Y.S.2d 432, 965 N.E.2d 934 (2012).